

DECISION DOCUMENT
NATIONWIDE PERMIT NO. 31

10 Dec 1996

This document constitutes the Environmental Assessment, 404(b)(1) Compliance Review and Statement of Findings for the Nationwide Permit (NWP) described below.

1. MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES.

Discharges of dredged or fill material for the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that were (i) previously authorized by the Corps by individual permit, general permit, or by 33 CFR 330.3 and constructed or (ii) constructed by the Corps and transferred to a local sponsor for operation and maintenance. The maintenance is limited to that approved in a maintenance baseline determination made by the district engineer (DE). The prospective permittee will provide the DE with sufficient evidence for the DE to determine the approved and constructed baseline. Subsequent to the determination of the maintenance baseline and prior to any maintenance work, the permittee must notify the DE in accordance with the "Notification" general condition.

All dredged material must be placed in an upland site or a currently authorized disposal site in waters of the United States, and proper siltation controls must be used. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses. (Activities that involve only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, does not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)(ii)). Only constructed channels within stretches of natural rivers that have been previously authorized as part of a flood control facility could be authorized for maintenance under this NWP.

Maintenance Baseline. Upon receipt of sufficient evidence, the DE will determine the maintenance baseline. The maintenance baseline is the existing flood control project that the DE has determined can be maintained under this

NWP, subject to any case-specific conditions required by the DE. In determining the maintenance baseline, the DE will consider the following factors: the approved facility, the actual constructed facility, the Corps constructed project that was transferred, the maintenance history, if the facility has been functioning at a reduced capacity and for how long, present vs. original flood control needs, and if sensitive/unique functions and values may be adversely affected. Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR Part 330.5. This NWP can not be used until the DE determines the maintenance baseline and the need for mitigation and any regional or activity-specific conditions. The maintenance baseline will only be determined once and will remain valid for any subsequent reissuance of this NWP. However, if the project is effectively abandoned or reduced due to lack of proper maintenance, a new determination of a maintenance baseline would be required before this NWP could be used for subsequent maintenance.

Mitigation. In determining the need for mitigation, the DE will consider the following factors: any original mitigation required, the current environmental setting, and any adverse effects of the maintenance project that were not mitigated in the original construction. The DE will not delay needed maintenance for completion of any required mitigation, provided that the DE and the applicant establish a schedule for the identification, approval, development, construction and completion of such required mitigation. (Sections 10 and 404)

General conditions of the NWP are contained in the Federal Register. Notification requirements, additional conditions, limitations and restrictions are contained in 33 CFR Part 330.

2. STATUTORY AUTHORITY:

- (a) Section 10 of the Rivers and Harbors Act of 1899
(33 U.S.C. 403)
- (b) Section 404 of the Clean Water Act (33 U.S.C. 1344)

3. COMPLIANCE WITH RELATED LAWS (33 CFR 320.3):

(a) General:

NWPs are a type of general permit designed to regulate certain activities that have minimal adverse effects and generally comply with the related laws in 33 CFR 320.3. Potential adverse effects and compliance with the laws in 33 CFR 320.3 are controlled by the terms and conditions of each NWP, additional provisions, and the review process that is undertaken prior to the issuance of NWPs, including a PCN as required by this NWP.

(b) Terms and Conditions:

Specific general conditions of all NWPs provide for a case-by-case review of activities that may adversely affect endangered species or historic properties. Certain NWPs also have a notification requirement that will trigger a case-by-case review of particular activities. Another condition prohibits use of NWPs for activities that are located in wild and scenic rivers. None of the NWPs authorize artificial reefs.

In some cases, activities authorized by a NWP may require other Federal, state or local authorizations. Examples of such cases include but are not limited to: activities that are in or affect marine sanctuaries or marine mammals; the ownership, construction, location and operation of ocean thermal energy conversion facilities or deepwater ports beyond the territorial seas; or the transfer of a lot in a subdivision that is part of a project that requires a DA permit. In such cases, a provision of the NWPs specifies that the NWP does not obviate the need to obtain other authorizations required by law. [33 CFR 330.4(b)]

To further ensure that effects will be minimal, whenever, this NWP is combined with any NWP 12 through 40 a Corps-only PCN is required. The Corps will review such combinations of NWPs to ensure that the individual or cumulative effects are minimal. The Corps believes that combinations of any NWP 1 through 11 which does not already require a PCN, will result in minimal individual and cumulative effects. Therefore, no PCN would be necessary for the stacking of such NWPs.

An additional safeguard is a provision that allows the Chief of Engineers, Division Engineers and/or District

Engineers to: assert discretionary authority and require an individual permit for a specific action; modify NWPs for specific activities by requiring special conditions on a case-by-case basis; add special conditions on a regional basis for certain NWPs; or take action to suspend or revoke a NWP. [33 CFR 330.4(e) and 330.5]

(c) Review Process:

The analysis contained in this document and coordination that was undertaken prior to the issuance of all NWPs fulfills the requirements of The National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act and other acts promulgated to protect the quality of the environment.

All NWPs that authorize activities which may result in a discharge into waters of the U.S. require a 401 water quality certification. NWPs that authorize an activity within, or affecting land or water uses within a state that has a Federally approved coastal zone management program must also be certified as being consistent with the state's program. The procedures for compliance of NWPs with these laws are contained in 33 CFR 330.4(c) and (d), respectively.

(d) Public Comment and Response:

For public comment and response see the preamble to the Federal Register notice issuing the Final NWPs.

4. INDIVIDUAL AND CUMULATIVE IMPACTS:

(a) General evaluation criteria:

This evaluation constitutes the public interest review specified in 33 CFR 320.4 (a)(1) and (2), including environmental considerations of NEPA and the impact analysis specified in Subparts C-F of the 404(b)(1) Guidelines (40 CFR 230).

The evaluation criteria that are relevant to this particular NWP are identified in the following matrixes.

The determination that a particular factor is relevant or not is based upon consideration of the direct and indirect impacts that can be reasonably attributed to the authorized

activity.

Because NWP's authorize activities on a nationwide basis, it is difficult to predict all of the indirect impacts that may be associated with each individual action. For example, the NWP for a road crossing may be used to fulfill a variety of project purposes. Indication that a factor is not relevant to a particular NWP does not necessarily mean that the NWP would not have an effect on such factor(s), but that it is a factor not readily identified with the authorized activity. In any case, adverse effects will be controlled by the terms, conditions and additional provisions of the NWP. For example, Section 7 consultation will be required for activities that may adversely affect endangered species. In other cases, factors may be relevant, but have negligible impacts. For example, the impacts of a boat ramp on flood plain values, water level fluctuations or flood hazards.

Factors identified as being relevant, to the extent that potential impacts of the activity determined the terms and conditions of a NWP, are discussed at the end of the matrixes.

(b) NEPA Alternatives:

This evaluation includes an analysis of alternatives based upon NEPA requirements which require a more expansive review than the section 404(b)(1) Guidelines. The alternatives discussed below are based upon an analysis that indicates the potential environmental effects as well as impacts to the Corps, public, Federal and State resource agencies, and permit applicants.

(i) No Action Alternative (no nationwide permit):

The no action alternative would not achieve the goals of the Corps nationwide permit program to reduce the regulatory burden on applicants for activities that would result in no more than minimal adverse environmental effects. The no action alternative would take resources away from the Corps ability to pursue the current level of review for other activities with more environmental effects. This includes individual permits that result from the Corps taking its discretionary authority under the

nationwide permit program. In the absence of this nationwide permit, Department of the Army authorization in the form of another general permit (regional or programmatic general permit (where appropriate)) or individual permits would be required. Corps district offices would most likely attempt to develop a regional general permit in lieu of a nationwide permit but this is an inefficient method and not practicable for the development of a general permit for activities that have applicability across the Nation. Not all districts would develop the regional general permit for a variety of reasons. This would result in an inconsistent establishment of regional general permits and create situations where similar activities with minimal effects would be evaluated differently, potentially within the same state. In addition, the resources necessary for the Corps to evaluate activities through an individual permit review, and the resources necessary for the public and Federal and State resource agencies to review and comment, would be overly burdensome for the numerous public notices that would result from not issuing this nationwide permit along with the other NWPs. As an example, when the Corps publishes a public notice for proposed activities that result in no more than minimal adverse environmental effects, the Corps typically does not receive responses to our public notices from either the interested public or Federal and State resource agencies. One other highly beneficial aspect of the nationwide permit program that would not be achieved through the no action alternative has been the desire of applicants to design activities that will meet the terms and conditions of a nationwide permit.

We believe the NWPs have reduced environmental effects significantly because most applicants modify their project to use the NWPs in an effort to avoid the delays and costs typically associated with the evaluation of an individual permit application.

(ii) National Modification Alternatives:

Since the Corps nationwide permit program began in 1977, we have continuously strived to develop nationwide permits that will cause no more than minimal adverse environmental effects for use throughout the Nation. We have developed the terms and conditions of this nationwide permit based upon this experience, including comments from the public and Federal and State resource agencies. The Corps is

constantly reevaluating the potential impacts of activities covered under nationwide permits and every five years, at a minimum, reevaluating the nationwide permits. As a result, the Corps has considered both decreases and increases in the scope of work for this nationwide permit and has determined that other alternatives are not practicable nor reasonable either from an environmental effect standpoint or from the effects associated with evaluating additional individual permits for activities.

(iii) Regional Modification Alternatives:

Corps divisions and districts will monitor and analyze the impacts of the nationwide permits and if warranted, regionally condition this nationwide permit to ensure that no more than minimal adverse environmental effects result.

In some cases districts will revoke the use of the nationwide permit based upon the potential for unacceptable adverse environmental effects (e.g., high value or unique wetlands) to occur even though the terms and conditions of the permit may be met.

(iv) Case specific on-site alternatives:

While thresholds have been developed for each nationwide permit, on-site alternatives will be considered for activities requiring a PCN further ensuring that this nationwide permit will result in no more than minimal adverse environmental effects. The PCN evaluation by the Corps may find that further conditioning of the nationwide permit for a specific activity, including relocating or further reduction of the impacts of the activity and/or compensatory mitigation, is necessary or that the project should be evaluated under the Corps individual permitting procedures. Specifically, if the Corps district determines that a proposed activity will have more than minimal adverse environmental effects on a high value aquatic resource, they may require an individual permit. This would result in a project specific alternatives analysis, including off-site alternatives, where high value aquatic resources are involved.

(c) Public interest review (320.4(a)(1)):

FACTOR:

RELEVANT TO THIS ACTION:

YES

NO

<u>Conservation</u>	X	
<u>Economics</u>	X	
<u>Aesthetics</u>	X	
<u>General environmental concerns</u>	X	
<u>Wetlands</u>	X	
<u>Historic properties</u>	X	
<u>Fish and wildlife values</u>	X	
<u>Flood hazards</u>	X	
<u>Flood plain values</u>	X	
<u>Land use</u>	X	
<u>Navigation</u>		X
<u>Shore erosion and accretion</u>	X	
<u>Recreation</u>	X	
<u>Water supply and conservation</u>	X	
<u>Water quality</u>	X	
<u>Energy needs</u>	X	
<u>Safety</u>	X	
<u>Food and fiber production</u>	X	
<u>Mineral needs</u>	X	
<u>Considerations of property ownership</u>	X	

(d) Impact analysis (Subparts C-F):

<u>FACTOR:</u>	<u>RELEVANT TO THIS ACTION:</u>	
	<u>YES</u>	<u>NO</u>
<u>Substrate</u>	X	

Suspended particulates/turbidity	X
Water	X
Current patterns/water circulation	X
Normal water level fluctuations	X
Salinity gradients	X
Threatened and endangered species	X
Aquatic food web	X
Wildlife	X
Special aquatic sites	X
Municipal and private water supplies	X
Water related recreation	X
Aesthetics	X
Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas	X

(e) Potential impacts:

(i) General:

This NWP was proposed by the Corps as a new nationwide permit (proposed new nationwide permit D) to authorize the excavation and removal of accumulated sediment and associated vegetation for maintenance of existing flood control facilities. The limitations and conditions included within the final permit, the NWP will comply with the "minimal effects" criteria for general permits. Safeguards for the protection of valuable habitat have been included within the permit, particularly in the procedure for the DE to determine the maintenance baseline and the provisions allowing for the DE to require mitigation.

This NWP will only authorize the maintenance of existing flood control facilities previously authorized by the Corps regulatory program or constructed by the Corps and transferred to a local sponsor for operation and maintenance may be in this NWP. The permit was designed for "flood control" facilities because of the public safety and property protection aspects associated with the necessity to maintain such facilities. The scope is limited to "flood control" facilities in order to maintain compliance with "similar activities" requirement for general permits. Therefore, the scope does not include irrigation facilities, all projects where a NEPA document has been prepared, drainage systems, improved channels, etc.

A provision has been included within the permit to limit activities to an established maintenance baseline, to be established by the DE. The process prescribed for determining the baseline includes considerations of the facilities maintenance history, and other factors designed to identify the purpose and need for the proposed maintenance and that the proposed maintenance activity is not excessive to achieve that need.

A PCN will be required for all work, which qualifies for this NWP. Notification on these maintenance activities is necessary because of the potential, in some cases, for greater than minimal effects to aquatic resources, and the need to establish the maintenance baseline. Once the maintenance baseline has been determined by the DE, the NWP can be used to maintain the Flood Control Facility to the approved baseline, without the need for any additional mitigation or verification of the maintenance baseline. Revocation or modification of this approval can only be done in accordance with 33 CFR Part 330.5. However, if the project is effectively abandoned due to lack of proper maintenance, a new determination of a maintenance baseline would be required before this NWP could be used for subsequent maintenance.

The NWP does not require that the disposal site be specified in advance, however, it does require that dredged material to be placed in upland areas or currently authorized disposal areas in waters of the U.S. Use of the disposal site must also be in compliance with all Federal,

state and local requirements as must every aspect of the project, or the NWP is not valid.

The final NWP includes provision for the DE to determine the need for mitigation. In determining the need for mitigation, the district engineer will consider the following factors: any original mitigation required, the current environmental setting and any impacts of the maintenance project that were not mitigated in the original construction. The district engineer will not delay needed maintenance for completion of any required mitigation, provided the DE and the applicant establish a schedule for the identification, approval, development, construction and completion of such required mitigation.

(ii) Physical, chemical and biological characteristics of the aquatic ecosystem:

This NWP applies to man-made flood control facilities. It is not intended to authorize the removal of sediment and associated vegetation from natural river courses for such purposes as redirecting or conveying normal river flows.

The excavation and removal of accumulated sediment and associated vegetation for maintenance of existing flood control facilities may result in the destruction of wetland vegetation growing as a result of the flood control structure. Some vegetation may have to be removed prior to maintenance activities while other vegetation may be crushed or excavated as a result of various maintenance activities or smothered by the placement of excavated material. Some of the ditches and basins may provide habitat areas for various fish and other aquatic organisms as well as terrestrial wildlife such as birds and small mammals, especially for facilities that have not been maintained for several years. Requiring Corps notification for maintenance operations will provide the DE with an opportunity to condition the permit to limit adverse effects.

During maintenance operations fish and wildlife are most likely to avoid the construction area. Benthic, immotile or slow moving organisms will likely be destroyed. Some organisms will be smothered by the placement of fill material or when suspended material settles to the bottom downstream of the operation. Limiting the area that may be impacted is expected to minimize the adverse effects of the

activity.

Depending on the construction method used; composition of the bottom; and wind and current conditions during excavation, turbidity in the water column will temporarily increase. The plume generated will normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the maintenance activity.

During construction small amounts of oil and grease may be discharged into the impacted flood control facility from construction equipment. Because the maintenance operations, in most cases, is short termed, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality.

To further minimize adverse effects of the authorized activity, the NWP allows the District Engineer to place additional conditions upon the specific activity in order to ensure that any adverse effects are minimized.

The NWP contains general conditions that will trigger special procedures for activities that may adversely affect historic properties or endangered species.

(iii) Effects on human use characteristics:

The excavation of some flood control facilities may alter the visual character of these areas. The extent and perception of the alteration will vary depending upon the nature of the surrounding area and the values of the public using the area including any naturalized wetlands or waterways.

The issuance of this NWP may help project proponents maintain their flood control facilities with little delay and paperwork.

(iv) Cumulative Impacts:

Cumulative impacts of the NWP generally do not depend on the number of times the permit is used on a national basis but on the number of times this NWP and other permits are used within a geographic area. Within a geographic area

(e.g., a specific watershed) it may be determined that the cumulative effects of NWPs have more than minimal adverse effects. The division engineer and the district engineer will monitor and review geographic areas that may have cumulative impacts that are more than minimal. The division engineer and the district engineer have the authority to require individual review of projects or to require special conditions to the permit either on a case-by-case basis or on a regional basis where cumulative impacts are determined to be more than minimal. When a division engineer or district engineer determines that a geographic area may have cumulative impacts that are more than minimal they will use the revocation and modification procedure at 33 CFR 330.5. In reaching the final decision they will compile information on the cumulative adverse effects and supplement this document.

Based upon a survey of division and district offices, we estimate approximately 10900 acres of impacts nationally from all NWPs with approximately 7800 acres of wetland mitigation. We conducted a preliminary survey to determine the usage of this NWP. Based upon this survey, approximately 200-400 maintenance of existing flood control facilities would be authorized under this NWP per year on a national basis. Of those approximately 50-100 maintenance of existing flood control facilities will have wetland impacts. The demand for these types of activities could increase or decrease over the five year duration of this NWP. Using the current trend approximately 1000-4000 maintenance of existing flood control facilities could be authorized over a five year period with wetland impacts of approximately 250-500. We expect that the time savings associated with the use of this NWP will encourage applicants to design their project within the scope of the permit rather than request an individual permit which could have a greater adverse effect.

(f) Additional Public Interest Review Factors 33 CFR 320.4(a)(2):

(i) Relative extent of the public and private need for the proposed structure or work 33 CFR 320.4(a)(2):

The need for this NWP is based upon the large number of permit applications for maintenance of flood control facilities received by the Corps every year. The NWP will

reduce delays to maintain flood control facilities reducing or eliminating flood risk.

- (ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work:

The objective of the proposed action is to develop a permit, that is readily obtained by the public and authorize an activity that has minimal adverse effects on the aquatic environment and overall public interest.

Most situations in which there is an unresolved conflict as to resource use, arise when environmentally sensitive areas are involved (e.g. special aquatic sites, including wetlands) or there are competing uses of a resource (e.g. use of a waterway for commercial versus recreational purposes). The nature and scope of the proposed action as well as the terms and conditions of the NWP minimize the likelihood of such a conflict. In the event that there is a conflict, the NWP contains provisions that are capable of resolving the matter (see sections 1 and 3 of this document).

- (iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited:

The nature and scope of the work authorized by the NWP will most likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding the activity. Most detrimental effects are associated with excavation operations and will be short term. As previously stated, the terms, conditions and provisions of the NWP were developed to ensure that individual and cumulative adverse effects are minimal. Specifically, NWPs do not obviate the need for the general permittee to obtain other Federal, state or local authorizations required by law. Conditions of the NWPs also specify that it does not grant any property rights or exclusive privileges (see section 3 of this document and 33 CFR 330.4 for further information). Additional conditions, limitations, restrictions and provisions for discretionary authority as well as the ability to include activity specific or

regional conditions on this NWP provide further safeguards to the aquatic environment and overall public interest. Provisions are also included to allow suspension, modification or revocation of the NWP. Refer to sections 1 and 3 of this document for further information and procedures.

(g) Endangered Species:

The Corps believes that the procedures that we have in place ensure proper coordination under Section 7 of the ESA as well as ensuring that threatened and endangered species will not be jeopardized and their critical habitat will not be destroyed. We also believe that current local procedures in Corps districts are effective in ensuring that the ESA is fully complied with under the nationwide permit program. Finally, we have incorporated several additional assurances into the program which have resulted from informal coordination with the Fish and Wildlife Service and the National Marine Fisheries Service.

Under the current Corps regulations for our NWP program (33 CFR 330.4(f)), each district must consider all information made available to it, and information that it has in its own records, to determine whether any listed threatened or endangered species or critical habitat may be affected by the action. Based upon this consideration and evaluation, the district will initiate consultation with the FWS or NMFS, as appropriate, if the district determines that the activity regulated may affect or the district determines that the action is not likely to adversely affect any endangered species. Consultation may occur under the NWP process or the district may take its discretionary authority to require an individual permit for the action and initiate consultation through the individual permit process. If the consultation is conducted under the NWP process without the district asserting its discretionary authority, then the applicant will be notified that he can not proceed until the consultation is complete. If the district determines that the activity would have no affect on any endangered species, then the district would proceed to issue the NWP authorization.

Corps districts have in most cases established informal or formal procedures with its local counterparts in the FWS and NMFS through which the agencies share information

regarding endangered species. Information developed, shared and used by the local Corps and FWS/NMFS offices result in the Corps becoming aware of potential adverse affects on ESA species. In many cases maps are available on the local level that identify locations of populations of endangered species and their critical habitat. Moreover, this NWP involves a level of potential impacts that require a PCN process of coordination with the other agencies, the Corps is now specifically requesting any information that the FWS or NMFS may have on endangered species as part of the PCN consultation. Thus, based on the location of the project an additional level of review now exists for these types of projects. Any information provided through the PCN process will be used by the district to make its may affect, not likely to adversely affect or no affect decision.

In addition to the procedures listed above, each NWP verification includes general condition 11 which states that "no activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or ... the critical habitat of such species". Also, to avoid possible confusion on the part of some applicants Condition 11 has been modified to clarify that this NWP does not authorize the taking of threatened or endangered species. This should help ensure that applicants do not mistake the Corps permit as a Federal authorization that would allow the taking of threatened or endangered species.

Based on the above the Corps has determined that this NWP will have no affect on threatened or endangered species or their critical habitat.

Although the Corps continues to believe that these existing procedures ensure that the ESA is complied with, we will take the following additional steps to provide further assurance. First, although not required to, the Corps will request programmatic formal Section 7 consultation with the FWS and NMFS as a precaution to further ensure that there is no affect. We intend that formal consultation will be concluded as soon as possible but not to exceed two years from the date of issuing the revised and reissued NWPs. Second, the Corps will direct the district offices, in writing, to meet with appropriate local representatives of the FWS and NMFS and establish or modify existing

procedures to ensure that the Corps has the latest information regarding the existence and location of any threatened or endangered species or their critical habitat in its district. This will ensure that districts have the best information available to make decisions regarding whether a specific activity may affect an endangered species and thus whether or not to initiate consultation.

The Corps districts can also establish through local procedures, regional conditions or other means of additional consultation for areas of higher likelihood that a permitted activity may affect an endangered species.

5. EVALUATION OF COMPLIANCE WITH THE GUIDELINES PROMULGATED UNDER SECTION 404(b)(1) OF THE CLEAN WATER ACT (40 CFR 230):

The 404(b)(1) compliance criteria for general permits is contained in 40 CFR 230.7.

(a) Evaluation Process 230.7(b)(1):

(i) Alternatives 230.10(a):

The consideration of alternatives are not directly applicable to general permits.

(ii) Prohibitions 230.10(b):

This NWP involves various activities, some of which may result in a discharge and require 401 water quality certification. State water quality certification requirements will be met in accordance with the procedures contained in 33 CFR 330.4(c).

No toxic discharges will be authorized by this NWP. Section 404 general condition no. 3 specifically states that the material discharged must be free from toxic pollutants in toxic amounts.

No adverse affect on endangered species will be authorized by this NWP. Refer to general condition no. 11 and 33 CFR 330.4(f) for information and procedures.

This NWP will not authorize the violation of any requirement to protect any marine sanctuary. Refer to section 3 of this document for further information.

(iii) Findings of Significant Degradation 230.10(c):

Potential impact analysis (Subparts C-F):

The potential impact analysis specified in Subparts C-F is contained in section 4 of this document.

Evaluation and testing (Subpart G):

Because the terms and conditions of the NWP specify the type of discharges that are authorized as well as those that are prohibited, individual evaluation and testing for the presence of contaminants will normally not be required.

If a situation warrants, provisions of the permit allow division or District Engineers to further specify authorized/prohibited discharges and/or require testing.

Based upon Subparts B and G, after consideration of Subparts C-F the discharges authorized by this NWP will not cause or contribute to significant degradation of waters of the United States.

(iv) Factual determinations 230.11:

The factual determinations required in 230.11 are contained in section 4 of this document.

(v) Appropriate and practicable steps to minimize potential adverse impacts 230.10 (d):

As demonstrated by the information contained in this document as well as the terms, conditions and provisions of this NWP, actions to minimize adverse effects (Subpart H) have been thoroughly considered and incorporated into the authorization.

(b) Evaluation process 230.7(b)(2):

(i) Description of the permitted activities:

As indicated by the description of the NWP in section 1 of this document and the discussion of potential impacts in section 4, the activities to be regulated by this NWP are sufficiently similar in nature and environmental effect to warrant regulation under a single general permit. Specifically, the purpose of the activity is to provide

small watercraft access to the waterway. The nature and scope of the impacts are controlled by the terms and conditions of the NWP.

If a situation arises in which the activity requires further review or is more appropriately regulated under an individual permit, provisions of the NWP allow division and/or District Engineers to take such action.

(c) Cumulative effects 230.7(b)(3):

A discussion of cumulative effects, including the number of activities likely to be regulated under this NWP is contained in section 4 of this document.

6. Final Determinations:

(a) Need for an environmental impact statement (FONSI):

Based upon the information contained in this document, issuance of the NWP will not have a significant impact on the quality of the human environment and the preparation of an Environmental Impact Statement is not required.

(b) 404 (b)(1) Compliance:

On the basis of the 404(b)(1) Guidelines (Subparts C-G), the discharges authorized by this NWP comply with the requirements of the Guidelines with the inclusion of appropriate and practicable conditions to minimize pollution or adverse effects on the affected aquatic ecosystems.

(c) Public interest:

Based upon the information presented in this document, issuance of the NWP, as prescribed by the regulations contained in 33 CFR Parts 320 to 330, is not contrary to the public interest.

(d) Section 176(c) of the Clean Air Act General Conformity Rule Review:

The proposed NWP has been analyzed for conformity applicability pursuant to regulations implementing Section

176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this NWP.

FOR THE COMMANDER:

/signed/
Russell L. Fuhrman
Major General, U.S. Army
Director of Civil Works